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IN THE

Supreme Court of the United States

October Term, A. D., 1948

No.

CLARK SUMNER CUMMINGS,
Petitioner,

vs.

STATE OF IOWA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA

To the Honorable Fred M. Vinson, Chief Justice of the United States, and Associate Justices of the Supreme Court of the United States:

Raymond E. Hanke, his counsel, respectfully shows to this Honorable Court:

Summary Statement of Matters Involved.

Summary of the Record.

Your petitioner, a citizen of the United States, entered a plea of guilty and was convicted and sentenced to the State Penitentiary at Fort Madison, Iowa, in the District Court of

the First Judicial District of Iowa at Fort Madison, Iowa, for the crime of entering a bank with intent to rob in Keokuk Cunty, Iowa, for indeterminate time of life imprisonment. He filed a petition for writ of habeas corpus in the District Court of the First Judicial District in Fort Madison, Iowa, and a hearing upon the writ was granted and set for trial and tried and was denied by the District Court. The lower court was sustained by the Supreme Court of Iowa on August 2, 1948, and a reahearing was denied October 22, 1948. (33 North Western Reporter, 2d Series—395 (Iowa).

The Petition for Writ of Habeas Corpus

The petition for writ of habeas corpus recites, among other things, as grounds therefor, that he is being illegally and unlawfully restrained from his rights to enjoy his liberty by the defendant as warden of the Men's State Penitentiary of the State of Iowa at Fort Madison, Iowa, (R 2). That he has been so restrained since on or about the 26th day of April, 1946, under a mittimus issued upon said date upon order of the Judge of the District Court in Fort Madison, Iowa. (R 2).

That upon the morning of his entering the plea of guilty to a county attorney's information, he was given a drink of whiskey by the Sheriff of Lee County, Fort Madison, Iowa. (R 4). That before he was taken over to Court, he heard the Sheriff and the County Attorney of the county talking, wherein they stated that he would be taken before the Judge and given a light sentence. (R 4). That he saw a young attorney in the Judge's chambers about 10:00 o'clock in the morning when the Judge signed some papers which were brought to him by the County Attorney (R 4-5). That this was about 10:00 o'clock in the morning. That they went into the courtroom where a Mr. Detriet entered a plea of guilty for him (R 5).

That the Judge then inquired as to whether or not he knew any legal reason why judgment should not be pronounced and that the petitioner stated that he knew of none and that the Judge then sentenced him to life imprisonment in the State Penitentiary of Fort Madison, Iowa. (R 5). That he then learned for the first time that he was to get a life sentence instead of a light sentence. (R 5). That he was taken from the courtroom then and very shortly thereafter, and before noon of that same day, was taken into the State penitentiary at Fort Madison, Iowa. (R 5).

That he was not familiar with court procedings and the law; that Mr. Detriet was there to represent him, but that he did not represent him. That he plead guilty only because he thought he would get a light term and that he thought that was better than staying in the county jail. That he entered no direct plea of guilty to the charge but stated that he guessed he was guilty of something. (R 5-6).

He was sentenced by the Judge to the wrong penal institution. (R-6)

That because of trickery practiced upon him by the law enforcing officers such as by giving him liquor to drink and by leading him to believe he would get a light sentence if he pled guilty, which amounted to trickery, and because of the fact that he had never been in any trouble before and because of his age and mental condition at the time the plea was entered and because of the shortness of time which expired between the time of the filing of the County Attorney's information and his plea of guilty (R 7-9), and because of the failure of an attorney who was appointed by the court to render any effective assistance to him, he was denied due process of law and the right to a fair and impartial trial as contemplated

by the Constitution of the United States and the Constitution of the State of Iowa. (R 9).

That he was deprived of his liberty without due process of law in violation of the Constitution of the United States, Amendments 5, 6, and 14. Also in violation of Article I, Section IX, of the Constitution of the State of Iowa. (R 10).

That he was denied his Constitutional rights in violation of Amendment 6, of the Constitution of the United States and Article I, Section 10, of the Constitution of the State of Iowa, for the reasons that he was denied the right of counsel to assist him in his defense. He was denied a fair and impartial trial by jury. He was denied the right to be confronted with witnesses against him. (R 10-11).

That Section 13002 of 1939 Code of Iowa defines the crime in question and prescribes the penalty for its violation. That the penalty prescribed carries an unusual punishment and as such is in violation of the Constitution of the United States, Amendment 8. (R 11).

That the speed with which this matter was handled and the shortness of the time involved for the nature of the crime and the gravity of the punishment involved was unjust, unwarranted, and unconscionable and in violation of the due due process clause of the Constitution of the United Statese. (R 11).

Plaintiff prayed for Writ of Habeas Corpus and for his discharge. (R 13)

Defendant filed general denial. (R 14).
The Writ of Habeas Corpus was granted. (R 14).
Trial on August 5, 1947. (R 14).

Evidence

Clark Sumner Cummings was a young man 25 year old on the date of hearing on Writ of Habeas Corpus on August 5, 1947. (R 14).

He was in Rock Island, Illinois, on April 24, 1946, when he learned that his wife, who lived in Fort Madison, Iowa, had secured a divorce from him. He and a friend, Francis Schmidt, started drinking intoxicating liquor after he made this discovery. (R 14-15).

He was arrested in Rock Island, Illinois, about 11:00 P. M. on April 24, 1946. Taken to Fort Madison, Iowa, about 7:00 P. M., April 25, 1946. Was taken to court room from jail about 10:00 A. M. the next morning. (R 15). He was in the Judge's chambers about fifteen minutes. (R 17). Five minutes later, he was taken into the courtroom (R 17) where he was arraigned and judgment was pronounced. About thirty minutes later he was in prison in the Men's State Penitentiary at Fort Madison, Iowa. (R 18).

C. T. Hull, Clerk of the District Court at Fort Madison, Iowa, identified the following exhibits and dates of filing and time of filing (R 28). They are as follows: Exhibit "A", County Attorney's Information, filed April 26, 1946, 10:40 A. M. (R 18); Judgment dated April 26, 1946, filed 11:00 A. M.; the Mittimus and Return of Warden dated April 26, 1946, filed 2:35 P. M.; Affidavit of Claim of Roy W. Deitchler for attorney fees for $20.00, dated April 26, 1946, filed 11:25 A. M. (R 29); The calendar page, Exhibit "B". (R 29).

The record as to time consumed in connection with these proceedings and the records were not in dispute and the instruments referred to comprised all of the matters in the file in the original case. No notes were taken by a court reporter (R 29).

The county attorney and the sheriff had a conversation outside of the prisoner's cell and he heard them say that he would be taken to court where he could plead guilty and get a "light" sentence (R 15). This is denied by witnesses for the defendant, R. F. Gregson denies this (R 33-34); also Deputy Sheriff F. L. Klopfenstein denied it (R 46).

That the prisoner, while in jail at Rock Island, Illinois, drank about one pint of whiskey on April 25, 1946 (R 19). That he drank about one pint of whiskey when he was in the county jail about thirty or forty minutes before he was taken over to court (R 16) which he got from the sheriff after he told him he was sick (R 16). That when he came into court he was under the influence of liquor to the extent that he had some knowledge of what was going on (R 25). F. L. Klopfenstein denied that he gave the defendant any whiskey (R 45).

In the Judge's chambers he saw three persons only, the Judge, the County Attorney, a man who was supposed to be his attorney. That he talked to him there for the first time (R 16), but not about his case (R 17). His attorney did not stand up beside him in the courtroom (R 17) and made no statement to the court before pronouncement of judgment or entering plea (R 17). That he never saw him receive any papers nor were any papers gone over with him at anytime (R 17-18).

Roy W. Deitchler, a defendant's witness, testified that at some time quite indefinite, but before arraignment, someone unknown to him advised him he was to be appointed by the court to appear as attorney for the defendant. (R 41). That he saw defendant at the jail between nine and ten o'clock he thought (R. 41) where he told Cummings what the penalty would be (R. 41). He talked to him a fair amount of time,

but didn't know how long (R.41) and told him that he could stand trial and if he plead guilty he would get a life sentence (R. 42) ; he also learned from Cummings that he had never been in any serious trouble before (R. 43). He didn't seem to want to stand trial but wanted to plead guilty (R. 43). After they went to the court house, he thought he talked to the prisoner a couple of minutes before they went into the courtroom, but he wasn't sure. He never got any copy of papers, unless maybe he got copy of information from County Attorney before arraignment, but said nothing about them to his client. He never asked for any delay so he could investigate. He wasn't sure whether he was in courthouse after seeing prisoner in jail, but thought he must have been because he never returned to his office. He didn't know whether he saw the prisoner at the courthouse or not (R. 44-45).

Judgment of the Trial Court

The trial court passed upon three propositions: (1) jurisdiction (2) denial of a fair trial because of trickery (3) lack of representation by counsel. (R. 54). In substance the trial court brushed aside these contentions by saying (1) no trickery under the evidence because you can't believe the plaintiff (2) he had counsel as contemplated by laws of State of Iowa and that he knew counsel appointed and he was a reputable member of his local bar and for the plaintiff's counsel to argue otherwise constituted a warped and prejudiced conception of the record. (R. 54-55) Petition dismissed.

Notice of Appeal

Plaintiff served notice of appeal to the Supreme Court of the State of Iowa (R. 56).

The matter reached the Supreme Court of Iowa and its opinion adverse to the appellant was filed in the office of the

Clerk of the Supreme Court of Iowa on August 2, 1948. (R. 60-66).

Appellant filed his petition for rehearing and his supporting brief and argument. Challenging the opinion of the Supreme Court of Iowa in the petition for rehearing, one of the pertinent points was the determination that the District Court's findings of fact were binding upon it even to the extent of its conclusions of law (R. 69), this for the reason that the trial court never decided whether the due process clause of the United States Constitution was or was not violated (R. 54). Also for the further reason that the Supreme Court of Iowa had no legal authority to order the trial court to modify the judgment in the original court without reversing the lower court (R. 69-70).

The appellee apparently filed a resistance to this petition on October 9, 1948, in the office of the Clerk of the Supreme Court of Iowa. This is shown by the Clerk's transcript. Appellant was represented by two attorneys of record at the time and the appellant's present attorney does not believe he ever received such resistance as filed (R. 80-83) although James D. Brien, his then co-counsel, may have received it. He is no longer practicing law. No prejudice is being claimed because of this by the petitioner.

Petition for rehearing denied, October 22, 1948 (R. 83).

B

Basis of the Court's Jurisdiction

This court may, by certiorari, have this cause certified to it for determination by virtue of Sections 237 (b) and 240 (a) of the Judicial Code as amended, Judicial Code 28 U.S.C. 344 (b) as supplemented by Rules 38, 43 of this court.

C

Questions Presented

1. Has the District Court of the First Judicial District of Iowa passed upon the Federal question of denial of due process as guaranteed by the Constitution of the United States under the evidence contrary to the applicable decisions of this court?

2. Has the Supreme Court of Iowa passed upon the question of violation of the Constitutional rights of petitioner in violation of defendant's right to due process as guaranteed by United States Constitution in accordance with the decisions of this court?

3. Was this petitioner as a defendant afforded the right to the effective representation by counsel as contemplated under the Constitution of the United States as in accord with former pronouncements of law upon this subject by this court?

4. May our State Supreme Court in the absence of statutory authority dismiss a petition for Writ of Habeas Corpus or sustain the dismissal by the trial court, and at the same time make an effective order to the lower court to modify a judgment in a collateral matter so as to change an illegal judgment by a new order as to place of commitment?

II

Reasons for Granting the Writ

This case should be reviewed by this court because it goes to the very fundamental rights of citizens charged with crime to the protection granted unto them by the Constitutions of both the United States and of the State of Iowa. The States are by judicial pronouncements as well as by legislative enactments narrowing down the rights of individuals even to the

extent of overlooking or misinterpreting both the Federal and the State's Constitutions. In the interest of the prosecution rather than in the interest of justice our law enforcement by its very nature carries the greater weight, and does unconsciously and inadvertently deny due process. This court by the granting of the Writ is oftentimes the only checkmate of local prejudice to a prisoner's rights.

Prayer

Your petitioner has filed the Record of the Supreme Court of the State of Iowa and has complied with the rules of this court in all other respects and prays that such orders be entered as may be required for your Honors to take jurisdiction by certiorari, and that judgment be reversed and that your petitioner be afforded such other and further relief in the premises as to this Honorable Court may seem just.

Respectfully submitted,

CLARK SUMNER CUMMINGS,
Petitioner,

By RAYMOND E. HANKE,
Counsel for Petitioner.

In the

Supreme Court of the United States

October Term, A. D., 1944

CLARK SUMNER CUMMINGS,
Petitioner,

vs.

STATE OF IOWA,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I.

Opinion of the Court Below.

The certified copy of the opinion of the Supreme Court of Iowa filed August 2, 1948 is found in Record, Page 60 to Page 66 inclusiveiy. The petition for rehearing was filed, together with supporting brief and argument and orally argued and denied on October 22, 1948, Record Page 83.

The Supreme Court of Iowa failed to decide the case as to Federal Constitutional questions raised in accordance with the former pronouncements of this court. That we complain o fthe decision so rendered by the highest court of this State.

II

Jurisdiction

The judgment of the trial court and of the State Supreme Court of Iowa became a final judgment as far as the State of Iowa was concerned when the State Supreme Court of Iowa denied the petition for rehearing upon the 22nd day of October, 1948. A certified transcript of the proceedings and rulings and judgments of the courts in this State are set out in the Record in this case which is filed herewith and said certified copy of the transcript is filed herewith.

The petitioner, among other things, contended in his petition for Writ of Certiorari that he was deprived of his liberty without due process of law as guaranteed unto him by Amendments Five, Six, and Fourteen of the Constitution of the United States, (R. 10 and 11) and in violation of the Constitution of the State of Iowa, Article 1, Sections 9 and 10. (R. 10 and 11). From an adverse ruling of the trial court, (R. 55-56) your petitioner served notice of appeal preserving all of the grounds raised in his original petition and taking exception to the trial court's pronouncement, for appeal to the Supreme Court of Iowa (R. 56). That the points raised as to the violation of the sections of the Federal Constitution were again raised in the petition for rehearing (R. 69).

We respectfully submit that the highest court of our State has refused to pass upon the Federal questions as such, which questions were properly raised in accordance with the former decisions and determinations of this court and, as this court has frequently said, that where such error occurs, that it is not only the right of the petitioner to have the error corrected by certiorari in this court, but that it is the

duty of this court to grant writ of certiorari in such instances and to grant the relief where such error has occurred. *Hawk* v. *Olsen,* 316 U. S. 271, 276; *Williams* v. *Kaiser,* 323 U.S. 471; *Tompkins* v. *Missouri,* 323 U.S. 485.

III

Statement of the Case

Your petitioner was arrested and charged with the crime of entering a bank with intent to rob. He entered a plea of guilty and was sentenced to the Men's State Penitentiary at Fort Madison, Iowa, for an indeterminate period and not to exceed life. After time for appeal had gone by, he filed petition for Writ of Habeas Corpus in the District Court of the First Judicial District of Iowa. The action was then appealed to the State Supreme Court of Iowa from an adverse ruling which was sustained by the State Supreme Court of Iowa, but ordered the modification of the original judgment changing the place of commitment only. The petition for rehearing was filed and denied. For further statement, we call your Honor's attention to the petition for Writ of Certiorari filed herein.

IV

Specification of Errors

The Supreme Court of the State of Iowa erred in passing upon the Federal questions involved in the matters submitted to it for its determination upon appeal as to the Federal questions therein involved in the following particulars, to-wit:

1. By wrongfully deciding that the plaintiff was not denied the right to a fair and impartial trial because of

trickery as guaranteed unto him by the Fourteenth Amendment of the Constitution of the United States (R-64).

2. That the State Supreme Court of Iowa was in error in deciding that his Federal Constitutional rights had not been violated because of any inadequate representation by counsel but found that he was adequately represented by counsel (R. 64).

3. That your petitioner was deprived of due process of law as guaranteed by the Sixth and Fourteenth Amendments of the Constitution of the United States.

BRIEF

I

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial and to be informed of the nature and cause of the accusation and to be confronted with witnesses against him and to have the assistance of counsel for his defense, Sixth Amendment of the Constitution of the United States. And no person shall be held to answer for an infamous crime unless on presentment or indictment of a grand jury, nor shall he be deprived of his liberty without due process of law, Fifth Amendment of the Constitution of the United States.

The States are required to protect the liberty of its citizens and not to take that liberty from them without due process of law. Fourteenth Amendment, Constitution of the United States.

The State of Iowa, by its Constitution, guarantees that the rights of its citizens shall not be abridged so as to deprive them of their liberty without due process of law and that, in all criminal prosecutions, that they shall have the right to a speedy and public trial by an impartial jury and be

informed of the accusations against them and to deliver a copy of said accusation when demanded and be confronted with witnesses against them and to have assistance of counsel as set forth in Article I, Sections 9 and 10 of the Constitution of the State of Iowa.

II

The judgment against your petitioner was void for the reason that he was sentenced to be committed to the Men's State Penitentiary at Fort Madison, Iowa, rather than to the Men's Reformatory at Anamosa, Iowa.

Section 789.19, 1946 Code of Iowa
25 Amer. Jur. 189, Sec. 63
39 CJS Sec. 26, Sub. Sec. 4, page 489, 492
76 A.L.R. 495, Div. 3, Sec. C, Sub-Div. 1
In re Bonner, 151 U.S. 242
Re Mills, 135 U.S. 263
McCormick v. *Hollowell*, 215 Iowa 638, 642

III

That the trial court in the original proceedings pronounced a void judgment which was sustained by the Supreme Court of Iowa in that he was denied the effective assistance of counsel and the right to a fair and impartial trial.

Amendments 6 and 14 of the Constitution of the United States
Article 1, Sections 9 and 10 of the Constitution of the State of Iowa
84 A.L.R. 544
146 A.L.R. 419
39 CJS, Section 15, Page 499, Col. 2
Powell v. *Alabama*, 287 U.S. 45, 58
Commonwealth v. *O'Keefe*, 298 PA 169; 148 Atl. 73
Hawk v. *Olsen*, 326 U.S. 271, 276
Smith v. *O'Grady*, 312 U.S. 329, 334
Tompkins v. *Missouri*, 323 U.S. 485

Cochran v. *Kansas*, 316 U.S. 255
House v. *Mayo*, 324 U.S. 42
White v. *Rogers*, 324 U.S. 760
Williams v. *Kaiser* 323 U.S. 471
Von Moltke v. *Gillies* 332 U.S. 708

ARGUMENT

MAY IT PLEASE THE COURT:

Without repeating any more of the facts than absolutely necessary, I want to especially call the court's attention to the facts with respect to the law upon the questions raised as to some of the facts set forth in the petition for certiorari as set out in the Abstract of Record filed herewith.

A young man 23 years old, a resident of Chicago, Illinois, separated from his wife and children (R-3), arrived in Rock Island, Illinois, where his father lived, from Chicago where he had been living with his mother (R-3), and stated to his father that he was on his way to Fort Madison, Iowa, to see his wife and children (R-3). That his father advised him that his wife had secured a divorce from him and that this was the first that he knew about it (R-3). Hhat he then became nervous and disturbed and started drinking (R-3). This was on April 24, 1946 (R-14). That the next thing that he recalled was about the time of his arrest the next day in the evening at Rock Island, Illinois (R-15). That he was taken to Fort Madison, Iowa, about 7:00 o'clock that evening and the next day he was taken from the jail at Fort Madison, Iowa, between 10:00 and 11:00 in the morning (R-15).

That the defendant had never been convicted of a crime and the only time that he was ever in jail was in Fort Madison, Iowa, about 30 days when no charges were filed previously (R-44 and 53). He testified that he was under the influence of liquor at the time he went over to the court-

house, which he had received from the Sheriff at his request. This, of course, was denied by the law enforcing officers.

He stated that there was a conversation outside of his cell door wherein the County Attorney told the Sheriff that he would plead guilty and get a "light" sentence. This, witnesses for the defendant denied. He recalled seeing a man in the Judge's chambers before he went into the courtroom and that this man he learned was supposed to be his attorney. That this was the first time that he saw him and that he never talked to him about the case. Roy W. Deitchler claims that he talked to the defendant at the jail and that he told him that, if he plead guilty, he would get a life sentence. This is denied by this petitioner. Roy W. Deitchler's affidavit recites that he was appointed to represent the defendant and that he did so defend him (R-40).

Deitchler testified for the defendant in the Habeas Corpus action and he testified he told the defendant, this petitioner, that if he plead guilty, it was a mandatory sentence and life imprisonment would be imposed upon him (R-42), and that when he advised him that he could stand trial, he didn't seem to be a bit interested in standing trial (R-43). That he asked him about his home life and the only thing that he could remember this petitioner telling him was that he was having some kind of trouble with his wife and that he wanted to know that if he plead guilty and went to prison for life, whether or not his family would be supported, and that he advised him that his sentence to life imprisonment would have nothing to do about the support of his children or his wife and that he never did understand whether or not the prisoner was happy or sorry about that. He couldn't get it clear from the prisoner. (R-43) As to the testimony of all of the other witnesses for the defendant in the Habeas Cor-

pus action, I believe they testified without exception that they told this petitioner that if he was found guilty, he would get a life sentence.

The facts above related, together with the record evidence as to the speed with which this trial was conducted, all have bearing upon the factual question as to whether or not all of the conversations, acts, and conduct of the law enforcing officers did or did not amount to trickery. The trial court said it did not; and the Supreme Court of Iowa has said that it did not; but it is our contention that it did amount to trickery which secured a plea of guilty to an infamous crime after the stage was all set by the law enforcing officers, and especially by R. F. Gregson, special agent of the Iowa Bureau of Criminal Investigation, to carry out his scheme and plan which he admitted to the effect that he was interested in just how fast he could engineer the thing through and get the prisoner put away for this job (R-37).

In the case of *Von Moltke* v. *Gillies*, 232 U.S. 708, decided by this court on January 19, 1948, this court, upon a petition for writ of certiorari, had before it a set of facts which for all intent and purposes were not far off from the facts in this case. I will not repeat them, but it is enough to say that the individual petitioner in that case, as the defendant in the criminal case, was an inexperienced and confused individual who secured no advice of any benefit to her before she entered her plea of guilty other than from those who were naturally opposed to her best interest and welfare, and that she entered a plea of guilty based upon this information and the court there held that her Federal Constitutional rights had been violated and that the writ of certiorari should be sustained.

Under the record evidence in this case and not upon the testimony of this petitioner alone the plea of guilty was secured by trickery and, as this court said in *Hawk* v. *Olsen*, 326 U.S. 271, 276:

> "In State prosecutions all conviction in a plea of guilty obtained by a trick, *Smith* v. *O'Grady*, 312 U.S. 329, 324—will not support imprisonment. Such procedure violates the Fourteenth Amendment to the Constitution, see *Tompkins* v. *Missouri*, 323 U.S. 485; *Cochran v. Kansas*, 316 U.S. 255."

The next proposition involved wherein this petitioner claims that his liberty was taken from him without due process of law in violation of his Constitutional rights, was that he was denied the effective aid of counsel in violation of his Federal Constitutional rights, and as a result thereof was denied due process and a fair and impartial trial.

The Supreme Court of Iowa on appeal in the Habeas Corpus proceeding took the position that this petitioner's rights were not violated based primarily upon the finding of the trial court. The Supreme Court of Iowa said:

> "But plaintiff's entire argument that due process was not observed or that he was denied the assistance of counsel is based entirely upon his own testimony." (R-62).

The State Supreme Court went on further to say:

> "The argument ignores the testimony of defendant which was in sharp conflict with plaintiff's testimony on the issue of whether the plaintiff was under the influence of liquor, or whether the plaintiff was told he would receive a light sentence, in event he plead guilty."

And the Supreme Court then goes on to say quoting from the trial court's finding:

> "The plaintiff was capably represented by a reputable member of the Lee County bar, one in which this court has the utmost confidence, * * * (R-63).

It is not enough to say that a defendant's attorney is a reputable member of the bar. Most of the attorneys, if not all of them who have been accused by former decisions of this court as not representing their client effectively as contemplated by the Fourteenth Amendment of the Federal Constitution, were, no doubt, reputable members of their local bar.

An examination of this record discloses that Roy W. Deitchler was an interested witness for the defendant against his former client in the Habeas Corpus action. By his own testimony, he did only two things. One was to visit the defendant before he was appointed to represent him in the county jail and to permit his representation to end there, except for a determination as to what the penalty was, and his visit and consultation in reference thereto with the county attorney, and the collection of the statutory $20.00 fee upon his affidavit. By his testimony he was, no doubt, inexperienced in reference to the handling of criminal cases for the defendant, and he certainly had no knowledge of the statutes involved. The record discloses a copy of the information filed by the county attorney and signed by the Judge in the original case (R 53 and 54). No names of the witnesses for the State were endorsed thereon and no statement was made as to what they would testify to as against the defendant. He did not know if he received a copy of this information or not (R-44). The defendant's attorney never made a request to the court on behalf of his client to give him a chance to investigate the case (R-44). He didn't check with his client as to his age and he permitted the pronouncement of a judgment by the trial court in violation of statute, committing the defendant to the wrong penal institution as pointed out by the Supreme Court of Iowa in its opinion,

(R-64). He permitted the pronouncement of judgment and the issuance of a mittimus thereunder without requiring the State statute to be complied with which provides:

> Section 789.19 of the 1946 Code of Iowa: "Allowance to bail upon appeal. In all cases except murder in the first degree and treason the court rendering judgment must make an order fixing the amount in which bail must be taken, and there shall be no execution of the judgment until such order is made."

As attorney for the defendant, he ignored the State Statute, Section 789.2 of the 1946 Code of Iowa, which provides:

> "Judgment of conviction—time for. Upon a plea of guilty, verdict of guilty, or a special verdict upon which a judgment of conviction must be rendered, the court must fix a time for pronouncing judgment, which must be at least three days after the verdict is rendered, if the court remains in session so long, or, if not, as remote a time as can reasonably be allowed; but in no case can it be pronounced in less than six hours after the verdict is rendered, unless defendant consent thereto."

Can it be said that the attorney gave effective representation to his client when the representation under the record in this case clearly shows that he did not protect his rights under the Sixth and Fourteenth Amendment under the Federal Constitution of the United States? This court has repeatedly said as they said in the case of *Powell* v. *Alabama*, 287 U.S. 45, 58:

> "It is not enough to assume that counsel thus precipitated into the case, that there was no defense, and exercised their best judgment in proceeding to trial without preparation. Neither they nor the court could say what a prompt and thorough investigation might disclose as to the facts. No attempt was made to investigate, no opportunity was given to do so. Defendants were immediately hurried to trial * * *"

The opinion reciting a quotation from Justice Anderson:

> "The record indicates that the appearance was rather proforma than zealous and active."

The court then goes on to say in its opinion:

> "Under the circumstances described, we hold that defendants were not accorded the right to counsel in any substantial sense, citing numerous cases."

In the *Powell Case* this court cited with approval the law pronounced in *Commonwealth* v. *O'Keefe*, 298 PA 169; 148 Atl. 73, where that court said:

> "It is vain to give the accused a day in court with no opportunity to prepare for it or to guarantee him counsel without giving the latter any opportunity to acquaint himself with the facts or law of the case."

And the same case then held that to force a defendant to trial within five hours of his arrest is a denial of due process regardless of the merits of the case. In the case at bar, if the defendant had counsel appointed for him by the court before the pronouncement of judgment, which fact we do not believe the record sustains, certainly the filing of the county attorney's information and the pronouncement of judgment, all within twenty minutes time for a crime carrying a penalty not to exceed life imprisonment, was with such rapidity that it was unconscionable, and any attorney representing a defendant with no more evidence at hand than he related as shown by the record in this case could not and did not represent his client in this proceeding. This rule is supported by this court in the case of *House* v. *Mayo*, 324 U.S. 42; *Smith v. O'Grady*, 312 U.S. 329; and *Von Moltke* v. *Gillies*, 332 U.S. 708.

Conclusion

I respectfully call attention of this Honorable Court to the fact that, if the record testimony of this petitioner were to be considered by you as unworthy of belief, the record evidence as to the State's witnesses and the exhibits in the case definitely establish that the Federal Constitutional rights of the petitioner were denied and that he was denied the right to a fair and impartial trial; that he was denied due process of law; that a plea of guilty was secured by connivance and trickery on behalf of the law enforcing officials in the dealing with a nervous, disturbed and up-set individual with no evperience in the law and no experience with jails and imprisonment. That this trickery developed by a conversation between the county attorney and the sheriff and the state agent about the penalty in the presence of the defendant for the express purpose of further exciting and tricking him into a plea of guilty rather than to stand trial upon a plea of not guilty. I believe the defendant when he said that he was administered intoxicating liquor in connection with their plan while in jail and before his arraignment. His statement as to his physical condition would well warrant and justify his request for it and, in connection with the plan to secure a plea of guilty, I honestly believe his testimony when he said it was administered to him. I do not believe that Roy W. Deitchler ever saw him at the county jail. Certainly, if he did, it was before he was appointed as his attorney and, if he did see him and visit him there, then in view of Deitchler's own testimony to the effect that he advised the county attorney what Supreme Court of Iowa had held the penalty to be for the crime of entering a bank with intent to rob was to the effect that Roy W. Deitchler was a part of that plan to secure a conviction by trickery

and certainly the length of time which expired between the filing of the county attorney's information and the pronouncement of judgment is further evidence of the plan and a pronouncement of our State Supreme Court in condemning such practice is evidence that our court thought likewise upon this particular point.

That the record discloses without question that Roy W. Deitchler was wrong when he stated in his affidavit for his attorney fee that "he did so represent the defendant." Within the meaning and the contemplation of law, he did not represnt him in any particular and the defendant was by far worse off by the so-called representation than if no attorney had been appointed for him whatsoever. He rendered no effective assistance as contemplated by the Constitution of the United States and the law and the decisions thereunder by the former pronouncements of this court.

We argue that this court grant the Writ of Certiorari as prayed for and that the court grant, order and direct that the Writ of Habeas Corpus be sustained, and the prisoner discharged and that he have such other, further and equitable relief as the court may deem to be just and proper in the premises.

Respectfully submitted,

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